

WA 535/2001
B E F O R E
HON'BLE THE CHIEF JUSTICE MR. A. K. GOEL
THE HON'BLE MR JUSTICE C.R.SARMA

(A.K. Goel, CJ.)

This order will dispose of Writ Appeal Nos.535/2001, 534/2001, 331/2002, 332/2002, 333/2002, 334/2002, 335/2002, 336/2002, 337/2002, 338/2002, 339/2002, 349/2002 and Review Petition No.3 of 2012 as the question raised in all the appeals is common. The matter was earlier disposed of by a Division Bench of this Court but has been remanded by the Hon'ble Supreme Court for a fresh decision.

Government of India vide letter dated 6.6.1966 initiated family planning programme in the light of report of the Mukherjee Committee (headed by Sri B. Mukherjee, the then Secretary, Ministry of Health and Family Planning) constituted by the Central Family Planning Council. As part of the said programme, the Central Government issued Health Guides (HGs) scheme on 10.8.1981 envisaging a set of volunteers to provide family health care and health education to the community. One H G was to be appointed for 1000 rural population on an average. The scheme provided that the job of Health Guide should not be considered as a source of income or for step towards future employment. He should spend 2/3 hours for community service and should be paid honorarium of Rs.50/- per month. The amount was later increased to Rs.100/- per month. Concept of 'voluntary female attendants' was also introduced in the State of Assam to man Sub Centers for which grant-in-aid was being given by the Central Government. The Sub Centers were also started simultaneously with the Health Guide scheme. A voluntary female attendant moved this Court by way of C.R. No.3847 of 1993 (Nandeshwari Bora vs. State of Assam & others) claiming parity of pay with the 'Ward Girls' working in the State of Assam in the pay scale of Rs.900 - 1435/-. The said petition was allowed on 18.7.1994 to the extent of directing payment of remuneration at the rate of Rs.900/- per month as against Rs.100/- per month which was being paid at that time. Relying on the said order, 54 other female attendants moved this Court by way of C.R. No.3073 of 1995 (Jalini Brahma and 53 others vs. State of Assam and others) seeking minimum scale applicable to the corresponding post and for regularization in service.

Submission made on behalf of the said petitioners was that the State being model employer was expected to pay at least minimum wages. Reliance was placed on judgment of the Hon'ble Supreme Court in Daily Rated Casual Labour Employees under the P & T Deptt. vs. Union of India, AIR 1987 SC 2343 and in Dharwad Distt. P.W.D. Literate Daily Wages Employees Association vs. State of Karnataka, AIR 1990 SC 883 to submit that the State could not take advantage of its dominant position and compel even casual labour to work on starvation wages.

This Court, on due reconsideration, vide order dated 22.2.2000 directed payment of minimum wages of Rs.900/- per month (referring to pay scale of Rs.900 - 1435/- applicable to Ward Girls) from July, 1991 or from the date of their appointment, whichever was later. The matter of regularization was left to the State Government. The said order was followed in subsequent orders including order dated 8.8.2001 in WP(C) No.5496/2001 (Hazera Khatun vs. State of Assam and others).

Aggrieved by the above orders, number of appeals were filed by the Central Government before a Division Bench of this Court and vide judgment dated 2.9.2003, 14 appeals were taken up together and disposed of by a common judgment in Writ Appeal No.535 of 2001 (Union of India and others vs. Ms. Hazera Khatun) and other connected cases. This Court held that there was nothing to disturb the finding recorded by learned Single Judge requiring payment of Rs.900/- per month by the State of Assam but the liability could not be fixed on the Central Government as no case was made out against the Central Government. Dispute between the Central Government and State Government could be settled between the two.

Aggrieved by the order of the Division Bench that liability was of the State Government, the State of Assam filed a set of appeals before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that State of Assam being necessary party was

s required to be impleaded if any order was passed against it in view of Udit Narain Singh Malpharia vs. Additional Member, Board of Revenue, Bihar (AIR 1963 SC 786). Accordingly, the judgment of the Division Bench was set aside and the matter was remanded. It was directed that the State Government may pay minimum wages under the Minimum Wages Act to the writ petitioners pending decision by this Court.

Learned counsel for the State has stated that though in the order of Hon'ble Supreme Court it is mentioned that the State Government will continue to pay minimum wages as per Minimum Wages Act, the State has understood the order as payment of Rs.900/- per month as per orders of this Court. Only issue before Hon'ble Supreme Court was whether liability is of Central Government or of State Government and not as to the quantum. Strictly speaking Minimum Wages Act was not applicable nor was any rate specified for period of work for which the writ petitioners were employed under the scheme. None of the writ petitioners has objected to this course so far. If the writ petitioners are aggrieved by this stand, they will be at liberty to take their remedy in accordance with law.

We have heard learned counsel for the parties.

In view of above narration, only question for consideration is as to whether liability to pay the concerned workers is of the State Government or the Central Government.

Learned counsel for the Union of India submitted that the Village Health Guide scheme was withdrawn by the Central Government vide letter dated 20.12.2001. Vide letter dated 15.6.2002 it was clarified that if the State Government wants to continue the scheme it will have to meet the requirement of funds from its own resources. The Central Government could not continue the scheme beyond 01.04.2002.

It was thus submitted that after 01.04.2002, the Central Government had no liability under the scheme. This aspect should be applied to Sub Centers also.

As regards Health Guides, it is brought to our notice that WP(C) No.8342 of 2001 giving rise to Writ Appeal No.332/2002 relates to Village Health Guides. Learned counsel for the writ petitioners in the said case fairly states that claim of his client was confined to pay of Rs.900/- per month upto the date the scheme remained operative. Learned counsel for the State of Assam states that nothing is outstanding on that count and he had no objection to look into the claim for three years prior to the filing of the writ petition and thereafter till the scheme was operative and in case any amount remains to be paid under the said scheme, the aggrieved party will be at liberty to move the Commissioner and Secretary, Health and Family Welfare Department, Government of Assam. If any representation in this regard is filed, the same will be decided within three months from the date of receipt thereof.

We have been told that there is no other case relating to Village Health Guides except Review Petition No.3/2012 which seeks review of order dated 27.7.2001 on the ground that in respect of Health Guides the State Government has no liability after 01.04.2002 as held in judgment of this Court dated 03.06.2010 in Review Petition No.96 of 2009 in WP(C) No.1042/2004 (Commissioner & Secretary vs. Anowara Begum). Since there is no claim after 01.04.2002, the Review Petition No.3/2012 is dismissed.

As regards workers at Sub Centers, learned counsel for the State of Assam pointed out that even though the Health Guide scheme came to an end, Sub Centers are working as part of Family Planning Programme of the Central Government. This could be seen from letter of the Central Government dated 10.6.94 (Annexure-D to the affidavit filed on behalf of the State Government dated 2.3.2012) read with letter dated 8.8.2006 issued by the Central Government to the Secretaries of all States mentioning that voluntary workers at Sub-Centers were entitled to Rs.1200/- p.m. Thus, according to him, it is the Central Government who is to bear the financial burden.

In view of letters of the Central Government, we are unable to accept the stand of the Central Government that scheme for the Sub Centers has been discontinued.

Once it is so, prima facie, liability for payment for workers at the Sub Centers is, as per scheme, of the Central Government. Burden of revised rates has, accordingly, to be born by same authority. The workers have to be paid by the State

and issue between Central Government and State Government can be settled between them. We are unable to exclude the liability of the Central Government as per orders of learned Single Judge. The question will stand answered accordingly. Learned counsel for the Central Government states that Central Government will clarify the position within three months from today and till then the State Government may continue to pay. We accept this suggestion.

Since the State Government has been making the payment at the rate of Rs.900/- per month as per judgment of the Hon'ble Supreme Court dated September 30, 2010. The said payment be continued upto June, 2012 and from 01.07.2012 the liability will be of the Central Government unless the Central Government takes a specific decision to discontinue the scheme.

It is also made clear that this order will not debar the State Government from settling the matter with the Central Government by mutual agreement for which purpose the Chief Secretary of the State may have a meeting with the Health Secretary of the Central Government.

We also make it clear that if any female attendant at the Sub Centers has a grievance of non-payment as per orders of this Court, they will be at liberty to move an appropriate representation to the Commissioner and Secretary, Health and Family Welfare Department, Government of Assam and if any such claim is made the same may be decided within three months from the date of receipt thereof.

The appeals stand disposed of accordingly.